

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	
	)	
Tamms Industries.	)	<b>FINDING OF VIOLATION</b>
Kirkland, Illinois	)	EPA-5-01-IL-01
	)	
PROCEEDINGS PURSUANT TO	)	
SECTION 183 OF THE CLEAN AIR	)	
ACT, 42 U.S.C. § 7511b	)	
_____	)	

**FINDING OF VIOLATION**

The United States Environmental Protection Agency (U.S. EPA) hereby notifies the State of Illinois and Tamms Industries (Tamms) located at 3835 State Route 72, Kirkland, Illinois, that the Administrator of the U.S. EPA finds Tamms to have violated Section 183 of the Clean Air Act (Act), 42 U.S.C. § 7511b, and its implementing regulations at 40 C.F.R. Part 59, Subpart D.

**REGULATORY BACKGROUND**

1. Section 183(e) of the Act, 42 U.S.C. § 7511b(e), authorizes U.S. EPA to promulgate regulations establishing requirements regarding the manufacturing of architectural coatings which contain Volatile Organic Compounds (VOC), emissions from which have the potential to cause or contribute to ozone levels that violate the national ambient air quality standards.
2. On September 11, 1998, the Administrator of U.S. EPA promulgated regulations pursuant to Section 183(e) of the Act, 42 U.S.C. § 7511b(e). 63 *Fed. Reg.* 48848. These regulations are codified at 40 C.F.R. Part 59, Subpart D (40 C.F.R. §§ 59.400 through 59.413 and Appendix A.)
3. 40 C.F.R. § 59.402(a) requires, in part, that each manufacturer and importer of any architectural coating subject to this subpart shall ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of this subpart.

4. 40 CFR § 59.402(b) states that "[e]xcept as provided in paragraph (c) of this section, if anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising or technical literature supplied by the manufacturer or importer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of more than one of the coating categories listed in table 1 of this subpart, then the most restrictive VOC content limit shall apply."
5. 40 CFR § 59.408(b) states, in part, that "[e]ach manufacturer and importer of any architectural coating subject to the provisions of this subpart shall submit an initial notification report no later than September 13, 1999".
6. According to 40 C.F.R. § 59.401:
  - a. "Waterproofing sealer and treatment" means a coating formulated and recommended for application to a porous substrate for the primary purpose of preventing the penetration of water.
  - b. "Primer" means a coating formulated and recommended for application to a substrate to provide a firm bond between substrate and subsequent coating.
  - c. "Industrial maintenance coating" means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats formulated and recommended for application to substrates exposed to one or more of the following extreme environmental conditions in an industrial, commercial or institutional setting:
    - (1) Immersion in water, wastewater, or chemical solutions (aqueous and nonaqueous solutions) or chronic exposure of interior surfaces to moisture condensation;
    - (2) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;
    - (3) Repeated exposure to temperatures above 120° C (250° F);

- (4) Repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; or
- (5) Exterior exposure of metal structures or structural components.

#### **Statement of Facts**

- 7. Tamms is the owner and operator of Tamms, Inc. located at 3835 State Route 72, Kirkland, Illinois.
- 8. Dural 333 is an architectural coating manufactured and distributed by Tamms.
- 9. Dural 1004 is an architectural coating manufactured and distributed by Tamms.
- 10. According to information Tamms provided to the U.S. EPA, in response to an information request dated June 20, 2000, Dural 333 has maximum VOC content of 558 g/L and Dural 1004 has a maximum VOC content of 492 g/L. Both products are listed by Tamms as compliant with the "waterproofing sealers and treatments" category VOC limit of 600 g/L.
- 11. Under Table 1 of 40 C.F.R. Part 59, Subpart D, the "primers and undercoaters" category VOC limit is 350 g/L, and the "industrial maintenance coatings" limit is 450 g/L.
- 12. Tamms's technical data sheet for Dural 333 reads, "Dural 333 is a solvent based epoxy penetrating sealer, for concrete and masonry surfaces. It fills the surface pores thereby lowering the absorption of water and salts."
- 13. Tamms's technical data sheet for Dural 1004 reads, "Dural 1004 is a two component, solvent based, aliphatic polyurethane, waterproofing sealer which offers outstanding abrasion resistance... and weather resistant characteristics" It also states: "Dural 1004 is a premium performance waterproofing sealer used on airport hangar floors and on walls and floors in manufacturing plants, warehouses, bridge decks and support piers. The cleanability and good chemical resistance make it effective

in clean rooms, laboratories...", and "Dural 1004 should not be applied directly to concrete . Dural 304 LV (two-part solvent based epoxy) or **Dural 333** (two part epoxy sealer) may be used to **prime** concrete...". (Emphasis added)

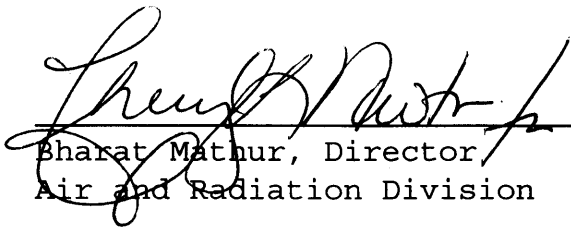
#### Findings of Violation

14. Tamms has printed labels and product data sheets which make representations that Dural 333 meets the definition of primers and Dural 1004 meets the definition of industrial maintenance coatings, under 40 C.F.R. § 59.401. Further, these products are identified by Tamms as waterproofing sealers though they meet the definitions of a primer and an industrial maintenance coating, respectively. Each of these coatings must meet the VOC limits of the most stringent category into which it could fall. Failure to meet these limits is a violation of this subpart.
15. Tamms's Dural 333 exceeds the applicable limit for primers. This is a violation of 40 C.F.R. § 59.402(a).
16. Tamms's Dural 1004 exceeds the applicable limit for industrial maintenance coatings. This is a violation of 40 C.F.R. § 59.402(a).
17. Tamms failed to submit an initial notification report prior to September 13, 1999. This is a violation of 40 CFR § 59.408(b).

Wherefore, the Administrator of the U.S. EPA, by authority duly delegated to the undersigned, hereby notifies Tamms Industries and the State of Illinois that Tamms Industries is in violation of the Clean Air Act and implementing regulations as set forth above.

Date

11/8/00

  
Bharat Mathur, Director  
Air and Radiation Division

CERTIFICATE OF MAILING

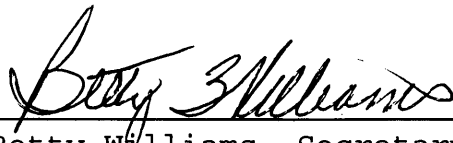
I, Betty Williams, do hereby certify that a Finding of Violation pursuant to the Clean Air Act was sent by Certified Mail, Return Receipt Requested, to:

Jeffrey A. Pink  
Tamms Industries  
3835 State Route 72  
Kirkland, Illinois 60146

I also certify that a copy of the Finding of Violation pursuant to the Clean Air Act was sent by first class mail to:

David Asselmeier, Acting Section Manager  
Compliance and Systems Management  
Bureau of Air  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

on the 9<sup>th</sup> day of November 2000.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7699 3400 0000 9692 1730